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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,850	03/15/2001	Richard M. Shelton	10255US01	5255

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EXAMINER

BASEHOAR, ADAM L

ART UNIT	PAPER NUMBER
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2178

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/808,850

Applicant(s)

SHELTON, RICHARD M.

Examiner

Adam L Basehoar

Art Unit

2178

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to communications: The Amendment filed 09/03/05 to the original Application filed on 03/15/01.
2. Claims 1-6, 15-21, 30-31, 35-37, and 46 remain rejected under 35 U.S.C. 102(b) as being anticipated by Hill et al (US: 6,023,714 02/08/00)
3. Claims 7-8, 22-23, 32-34, and 38-39 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Hill et al (US: 6,023,714 02/08/00)
4. Claims 9-14, 24-29, and 40-45 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Hill et al (US: 6,023,714 02/08/00) in view of Bernard et al (WO 00/29935 05/25/00)

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-6, 15-21, 30-31, 35-37, and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Hill et al (US: 6,023,714 02/08/00).

-In regard to independent claims 1, 16, and 31 Hill et al teach a method and computer readable medium for formulating a text file (style sheet)(Fig. 2: 214a-n) containing color

Art Unit: 2178

commands (color properties)(column 8, lines 20-25) for presentation of objects (document content)(column 2, lines 30-32) within a web page (Fig. 2: 210) based on a color response (characteristics and capabilities)(column 9, lines 23-31) of a display device (Fig. 2: 200) associated with a client (Fig. 2: 204) on a computer network (Fig. 2); and communicating the text file via the computer network (column 2-3: Summary of Invention).

-In regard to dependent claims 2, 17 and 35, Hill et al teach specifying a color value (column 8, lines 20-25) in the text file (column 7, lines 5-16) based on the color response of the display device (column 9, lines 24-33).

-In regard to dependent claims 3, 18 and 36, Hill et al teach communicating the web page to the client (Fig. 2); and setting a color of an object in the page based on the color value in the text file (column 7, lines 5-15).

-In regard to dependent claims 4, 19, and 37, Hill et al teach setting a text and background color properties (column 4, lines 12-14).

-In regard to dependent claims 5 and 20, Hill et al teach setting the color of an image tagged ()(column 6, lines 37-45) in the web page (Fig. 2: 210) based on the color response (characteristics and capabilities: specifically color palette and resolution) of the display device (column 9, lines 23-31); and communicating the tagged image to the client (column 2-3: Summary of Invention).

-In regard to dependent claims 6, and 21, Hill et al teach generating a color profile based on the color response of the display device (equivalent to the result of interrogating the output device to determine its characteristics and capabilities)(column 3, lines 9-20); formulating the

Art Unit: 2178

text file based on the profile (column 3, lines 16-17); and setting the color of the image ()(column 6, lines 37-45) based on the profile (color palette and resolution)(column 9, lines 23-31).

-In regard to dependent claims 15, 30, and 46, Hill et al teach communicating web pages to multiple clients on a computer network (column 2, lines 15-24); and formulating customized text files (style sheets)(Fig. 2: 214a-n) for the web pages (document content)(Fig. 2: 210) based on the color responses (color palette and resolution)(column 9, lines 23-31) of display devices associated with each particular client.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7-8, 22-23, 32-34, and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill et al (US: 6,023,714 02/08/00).

-In regard to dependent claims 7 and 22, Hill et al teach communicating the web page from a first server (Fig. 2: 208 & 210); and communicating a tagged image with the document content (column 6, lines 37-42). Hill et al do not specifically teach wherein the tagged image was located on a second server. It would have been obvious to one of ordinary skill in the art at the time of the invention for the above mentioned processes of Hill et al, performed on a single

Art Unit: 2178

server, to have been distributed over two or three servers because it was notoriously well known in the art that client/server networked architecture could be performed on more than one server wherein the advantage lied in distributing the work load required to process the client requests and as such was a mere design choice.

-In regard to dependent claims 8, 23 and 32, Hill et al teach communicating the web page from a first server (Fig. 2: 208 & 210); and communicating the text file (style sheet) from the same server (Fig. 2: 214a-n). Hill et al do not specifically teach wherein the text file (style sheet) was located on a second server. It would have been obvious to one of ordinary skill in the art at the time of the invention for the above mentioned processes of Hill et al performed on a single server to have been distributed over two or three servers, because it was notoriously well known in the art that client/server networked architecture could be performed on more than one server wherein the advantage lied in distributing the work load required to process the client requests and as such was a mere design choice.

-In regard to dependent claims 33-34, Hill et al teach wherein the color correction module runs on the first server (Fig. 5: 506). Hill et al do not teach wherein the color correction module was run on the second or the third server. It would have been obvious to one of ordinary skill in the art at the time of the invention for the above mentioned processes of Hill et al performed on a single server to have been distributed over two or three servers, because it was notoriously well known in the art that client/server networked architecture could be performed on more than one server wherein the advantage lied in distributing the work load required to process the client requests and as such was a mere design choice.

Art Unit: 2178

-In regard to dependent claim 38, Hill et al teach a server (Fig. 2: 208) that sends the web page (Fig. 2: 210) to the client (Fig. 2: 204); wherein the server sends an image tagged in the web page ()(column 6, lines 37-45), wherein the color correction module sets a color of the image based on the color response (characteristics and capabilities) of the display device (column 9, lines 23-31). Hill et al do not specifically teach wherein the tagged image was located on a second server. It would have been obvious to one of ordinary skill in the art at the time of the invention for the above mentioned processes of Hill et al, performed on a single server, to have been distributed over two or three servers because it was notoriously well known in the art that client/server networked architecture could be performed on more than one server wherein the advantage lied in distributing the work load required to process the client requests and as such was a mere design choice.

-In regard to dependent claim 39, Hill et al teach generating a color profile based on the color response of the display device (equivalent to the result of interrogating the output device to determine its characteristics and capabilities)(column 3, lines 9-20); formulating the text file based on the profile (column 3, lines 16-17); and setting the color of the image ()(column 6, lines 37-45) based on the profile (color palette and resolution)(column 9, lines 23-31).

9. Claims 9-14, 24-29, and 40-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill et al (US: 6,023,714 02/08/00) in view of Bernard et al (WO 00/29935 05/25/00).

-In regard to dependent claims 9-10, 24-25, and 40-41, Hill et al teach characterizing the color response of the client display device by having the server interrogate the client device (Fig. 5: 506)(column 9, lines 23-31). Hill et al do not teach guiding the client through a color profiling

Art Unit: 2178

process by delivering one or more color profiling web pages to the client. Bernard et al teach remotely characterizing the capabilities of the client output device by guiding the user through a color profiling process by delivering one or more color profiling web images (equivalent to web pages)(Remote Characterization: pp. 15-17). It would have been obvious to one of ordinary skill in the art at the time of the invention for Hill et al to have involved the user in the color profiling process as taught in Bernard et al, because Bernard et al teach that having optimal user display settings, which can best be determined by the user, would have increased user confidence for online purchases knowing that the viewed image was an accurate depiction of the product (pp. 6 & 7, lines 31-32 & 1-2).

-In regard to dependent claims 11-13, 26-28, and 42-44, Hill et al teach the web server interrogating the client display device to determine the characteristics and capabilities of the display device in order to communicate an appropriate text file (style sheet) (Fig. 5: 506)(column 9, lines 23-31). Hill et al do not teach wherein a web cookie was used to store information pertaining to the characteristics and capabilities of the client device and communicating said cookie to the server so that the server could select an appropriate text file (style sheet) for the client. Bernard et al teach sending a web cookie storing user display calibration and characterization data to a web server so that an appropriate text file (color corrected version of an image) could be selected based on the cookie data and communicated to the user (pp. 8, lines 7-19). It would have been obvious to one of ordinary skill in the art at the time of the invention, for Hill et al to have used the cookie feature to store persistent display device data as shown in Bernard et al, because Bernard et al teach that using cookies was a well known technique to provide personal settings or information specific to the user without requiring a server to store

Art Unit: 2178

information for all of its users (pp. 8, lines 16-19). In addition it would have been well known in the art at the time of the invention, that using web cookies to store the display characteristics of Hill et al would have reduced processing time for users that requested multiple web pages because the display device of the user would not have to be interrogated by the server on each subsequent page request.

-In regard to dependent claims 14 and 29, Hill et al, as shown above, teach communicating the web page to the client from a first server; storing the text file (style sheet) and the tagged image (tag) on the first server; communicating the tagged image to the client from the server. Hill et al do not teach storing the text file and tagged image data on a second server or communicating the above mentioned color profiling web pages from a third server. It would have been obvious to one of ordinary skill in the art at the time of the invention for the above mentioned processes of Hill et al performed on a single server to have been distributed over two or three servers, because it was notoriously well known in the art that client/server networked architecture could be performed on more than one server wherein the advantage lied in distributing the work load required to process the client requests and as such was a mere design choice.

-In regard to dependent claim 45, Hill et al, as shown above, teach communicating the web page to the client from a first server; storing the text file (style sheet) and the tagged image (tag) on the first server; communicating the tagged image to the client from the server; and characterizing the color profile of the client device by interrogating said device from the server. Hill et al do not teach guiding the client through a color profiling process by delivering one or more color profiling web pages to the client. Bernard et al teach remotely characterizing

Art Unit: 2178

the capabilities of the client output device by guiding the user through a color profiling process by delivering one or more color profiling web images (equivalent to web pages)(Remote Characterization: pp. 15-17). It would have been obvious to one of ordinary skill in the art at the time of the invention for Hill et al to have involved the user in the color profiling process as taught in Bernard et al, because Bernard et al teach that having optimal user display settings, which can best be determined by the user, would have increased user confidence for online purchases knowing that the view image was an accurate depiction of the product (pp. 6 & 7, lines 31-32 & 1-2).

Hill et al also do not teach wherein there were three servers. It would have been obvious to one of ordinary skill in the art at the time of the invention for the above mentioned processes of Hill et al performed on a single server to have been distributed over two or three servers, because it was notoriously well known in the art that client/server networked architecture could be performed on more than one server wherein the advantage lied in distributing the work load required to process the client requests and as such was a mere design choice.

Double Patenting

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Art Unit: 2178

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 1-46 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-46 of copending Application No. 09/809,654. Although the conflicting claims are not identical, they are not patentably distinct from each other because, while the instant application does not teach a text file, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a text file containing color commands for web page content, because it was notoriously well known in the art for style sheets to be web text files for formatting web page content, which was the embodiment of the instant applications style sheet.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

12. Applicant's arguments filed 09/03/04 have been fully considered but they are not persuasive.

-In regard to the substantially similar independent claims 1, 16, and 31, the Applicant argues that Hill et al fails to teach or suggest formulating a style sheet based on the color response of a display device associated with a client computer. The Applicant's main argument is that the formulation of a style sheet based on the display "capabilities" of the client display (i.e. display device resolution, color palette, color depth, aspect ratio, supported fonts, etc) in Hill

Art Unit: 2178

et al was not equivalent to the formulation of a style sheet based on the “color response” of a client display device (Remarks: Page 3, Lines 1-4).

The examiner respectfully disagrees with the Applicant and believes Hill et al teaches the above features. In regard to the main argument, the Examiner believes that the capabilities of the display device are equivalent to the color response of the Applicant's application. The examiner notes that the term “color response” in and of itself is a broad limitation and does not preclude the multiple capabilities of Hill et al from reading on it. It appears the Applicant wants the color response limitation of the claims to embody color matching properties wherein color of different mediums remains the same when rendered on other mediums with or without manipulation. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. indicates the output of a display device in response to particular color input (Remarks: Page 3: Lines 20-21) and match the colors of the objects as originally intended (Remarks: Page 2: Lines 25-27) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Finally the examiner wishes to point out that wherein Hill et al selects a style sheet to be applied to a web page based on the color capabilities of the display, Hill et al selects a style sheet that can be rendered correctly by the display device (column 7, lines 5-17). Thus if the interrogated display device capabilities were shown to be unable to render “blue” or any other color for that matter, a different style sheet would be used to render the page with different colors.

In regard to independent claim 31, the Applicant argues that Hill et al does not teach a color correction module. The examiner notes that independent claim 31 is substantially similar to the other independent claims in that the color correction module was equivalent to the layout generator (Fig. 2: 212), which formulates the style sheet based on the color response.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 2178

US-2002/0012461

01-2002

MacKinnon et al.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam L Basehoar whose telephone number is (571)-272-4121.

The examiner can normally be reached on M-F: 7:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Hong can be reached on (703) 308-5465. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ALB

William L. Bashore
WILLIAM BASHORE
PRIMARY EXAMINER
6/16/2005